IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

CRP.No. 593 of 2007(B)

(THE ORDER DATED 20/06/2007 IN E.P. NO. 58/2006 OS.138/2001 OF MUNSIFF COURT, ALUVA)

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REVISION PETITIONER/JUDGMENT DEBTOR/RESPONDENT:

MANI, S/O.KUMARAN,
NEDUMPURAM VEEDU, PARAPPURAM KARA,
KIZHAKKUMBHAGAM VILLAGE, ALUVA TALUK.

BY ADV. SRI.WILSON URMESE,
SRI.M.K.SALIMKUMAR.

RESPONDENT/DECREE HOLDER/PETITIONER:

SHERLY DIKKOTTA,
W/O LAVETTA DIKKOTTA, KADAVIL HOUSE,
PARAPPURAMKARA, KIZHAKKUMBHAGAM VILLAGE,
ALUVA TALUK.

BY ADV. SRI.A.V.XAVIER.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/07/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.593 OF 2007

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Dated this the 30th day of July,2007

O R D E R

This revision petition is preferred against the order of the Munsiff's Court, Aluva in E.P.No.58 of 2006 in O.S.No.138 of 2001. By the impugned order, the court found that the judgment debtor is having sufficient means to pay off the decree debt and he is neglecting to pay the amount and therefore ordered arrest. Learned counsel for the petitioner would contend that the evidence adduced in this case is not sufficient to prove the means of the judgment debtor. The two points urged by the decree holder are: One regarding the employment in a petrol pump and the other regarding the running of poultry business. The respondent has categorically deposed to the effect that he was only a former employee of the petrol pump. So far as poultry business is concerned, it is done by one Dileep and not by him. The court below found that it was for the judgment debtor to prove that the business is conducted by Dileep. It is always easy to adduce positive evidence rather than to prove the negative.

Therefore the approach made by the court below is not proper and one

had to find out what is the income derived and whether such an income is sufficient to discharge the decree debt. These are all matters which requires detailed consideration. Therefore the order suffers from serious infirmity and it is set aside. It is desirable that an opportunity be given to the decree holder to establish the plea of means and therefore the matter is remitted back to the court below to permit the parties to adduce evidence in respect of their contentions in accordance with law. Needless to say that both the parties are permitted to adduce their evidence in respect of their contentions. Parties are directed to appear before the court below on 6.9.2007.

C.R.P. is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-